

CHAPTER 1

ACCESS TO PROGRAMS AND SERVICES

1.1 Introduction and Legal Requirements

The State of Hawaii shall strive to have people who have disabilities included in all programs, services, or activities which are available to the general public. The "Disability Access to Programs and Services Manual" establishes a consistent approach to providing good public service and equal access for people who have disabilities to programs and services offered by the State of Hawaii consistent with federal and state laws. The purpose of this Manual is to provide program managers and staff with a reference guide when planning a program or service to ensure equal inclusion of individuals who have disabilities as customers or program participants.

This Manual is not intended for use when accommodating employees with disabilities, although many of the principles are the same. A separate guide, entitled the "Accommodations for Employees with Disabilities Manual," has been issued by the State of Hawaii to provide guidance to you in meeting your responsibilities as an employer.

To obtain either Manual, contact your department ADA Coordinator or:

Disability and Communication Access Board
919 Ala Moana Blvd., Room 101
Honolulu, HI 96814
(808) 586-8121 (V/TTY)

The Manual contains many examples, especially in Chapters 1 to 3. The examples noted are for illustrative purposes only to highlight a requirement or rule. The examples do not necessarily reflect poor or incorrect past practices of any department or agency mentioned.

The State of Hawaii is covered in its entirety by the provisions of Title II of the federal Americans with Disabilities Act (ADA) which relates to state and local government. In addition, those programs which receive federal financial assistance are covered by Sections 503 and 504 of the Rehabilitation Act of 1973, as amended. It should be noted that the provisions for both laws are virtually identical, although failure to comply with the latter may result in additional penalties and withdrawal of federal financial assistance. Both laws prohibit discrimination in accessing programs and services against qualified individuals who have disabilities.

State law (Hawaii Revised Statutes Chapter 368-1.5) also states that no otherwise qualified individual shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination by state agencies solely by reason of disability. Thus, both Chapter 368-1.5 and the ADA may

be violated if access to programs and services are not provided to a qualified person with a disability.

The requirements, guidelines, and examples set forth in this Manual are primarily chosen to ensure compliance with federal law, Title II of the Americans with Disabilities Act. The information in this Manual does not constitute a legal opinion. It represents informal technical assistance and guidance based upon federal documents relating to the Americans with Disabilities Act, supplemented by relevant state documents and examples. Ongoing technical assistance on aspects of this Manual is available from your departmental ADA Coordinator or the Disability and Communication Access Board. Legal advice should be obtained from your respective Deputy Attorney General.

Some programs or services may have additional service requirements (e.g., in-class educational or instructional curricula for students with disabilities, housing services for tenants, rehabilitation for incarcerated prisoners) which may be mandated by other laws. This Manual does not intend to cover all aspects of programming for every possible state service. More information can be obtained from the Disability and Communication Access Board (DCAB) in those areas and about their laws, (e.g., Individuals with Disabilities Education Act (IDEA), Federal Fair Housing Act (FFHA), Uniform System for Handicapped Parking Act (USHPA), Air Carrier Access Act (ACAA), which impact the civil rights of people who have disabilities. These laws may overlap provisions described in this Manual within certain program areas and may require additional programming.

1.2 People with disabilities protected under the law

Federal and state laws prohibit discrimination against any "qualified person with a disability."

A "person with a disability" means an individual who has a physical or mental impairment which substantially limits one or more of the person's major life activities, has a record of such impairment, or is regarded as having such an impairment.

1.2.1 Person with a physical or mental impairment

Physical impairments include physiological disorders or conditions, cosmetic disfigurements, or anatomical loss affecting one or more of the body systems.

EXAMPLES: Orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV infection (symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

Mental impairments include mental or psychological disorders.

EXAMPLES: Mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Simple physical characteristics such as baldness, left-handedness, the color of one's eyes, hair, or skin or age do not constitute physical impairments. Similarly, disadvantages attributable to environmental, cultural, or economic factors are not impairments. The definition does not include common personality traits such as poor judgment or a quick temper, where these traits are not diagnosed symptoms of a mental or psychological disorder.

Physical or mental impairment does NOT include homosexuality or bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

Drug addiction is an impairment under the ADA. A department or agency, however, may base a decision to withhold services or benefits in most cases on the fact that an addict is engaged in the "current and illegal" use of drugs. "Illegal use" of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. It does not include use of controlled substances pursuant to a valid prescription, or other uses that are authorized by the Controlled Substances Act or other federal law. "Current use" is the illegal use of a controlled substance that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem. Protected individuals include persons who have successfully completed a supervised drug rehabilitation program or have otherwise been rehabilitated successfully and who are not engaging in the current illegal use of drugs. Additionally, discrimination is prohibited against an individual who is currently participating in a supervised rehabilitation program and is not engaging in the current illegal use of drugs.

Alcohol is not a "controlled substance", but alcoholism is considered a disability.

To constitute a "disability" a condition must substantially limit a major life activity. Major life activities include, but are not limited to, activities such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

1.2.2 Person with a record of impairment

Federal and state laws protect not only those individuals with disabilities who actually have a physical or mental impairment that substantially limits a major life activity, but also those individuals with a record of such an impairment. This protected group includes a person who has a history of an impairment that substantially limited a major life activity but who has recovered from the impairment, as well as a person who has been misclassified as having an impairment.

EXAMPLE: A man had cancer five years ago. The cancer was significantly limiting in his life at that time, with an inability to work due to intensive and severely debilitating chemotherapy and radiation treatments. The cancer is now in remission and the man is now functioning well. He is a person with a record of an impairment (cancer).

EXAMPLE: A man with a severe episode of Post Traumatic Stress Disorder (PTSD) during his early 20's voluntarily sought psychiatric care. After treatment and in-patient hospitalization, he is now able to function adequately. Even though he does not now have an impairment, he has a record of an impairment (mental illness).

1.2.3 Person regarded as having an impairment

Federal and state laws also protect certain individuals who are regarded as having a physical or mental impairment that substantially limits a major life activity, whether or not those individuals actually have an impairment.

EXAMPLE: A woman with mild diabetes controlled by medication, is barred by the staff of a state-sponsored summer camp from participation in certain sports because of her diabetes. Even though she does not actually have an impairment that substantially limits a major life activity, she is protected under the law because she is treated as though she has an impairment.

EXAMPLE: A three-year old child born with a prominent facial disfigurement, is refused admittance to a state-run day care program on the grounds that her presence in the program might upset the other children. This child is an individual with a physical impairment that substantially limits her major life activities only as the result of the attitudes of others toward her impairment.

EXAMPLE: A man is excluded from a state-sponsored soccer team because the coach believes rumors that he is infected with the HIV virus. Even though these rumors are untrue, he is

protected under the law, because he is being subjected to discrimination by the state based on the belief that he has an impairment that substantially limits his major life activities (i.e., the belief that he is infected with HIV).

1.2.4 Qualified person with a disability

In order to be an individual protected under disability discrimination laws, an individual must be a "qualified" individual with a disability. To be qualified, an individual with a disability must meet the essential eligibility requirements for the receipt of services or participation in programs, activities, or services of the state with or without reasonable modifications to a public entity's rules, policies, or practices; removal of architectural, communication, or transportation barriers; or provision of auxiliary aids and services.

The "essential eligibility requirements" for participation in many activities of the state may be minimal.

EXAMPLE: The Department of Taxation provides information about their programs, activities, and services upon request. In such situations, the only "eligibility requirement" for receipt of such information would be a request for it.

However, under other circumstances, the "essential eligibility requirements" imposed by a state entity may be quite stringent.

EXAMPLE: The medical school at the University of Hawaii may require those admitted to its program to have successfully completed specified undergraduate science courses.

Health and safety factors can be taken into consideration in determining who is qualified. An individual who poses a direct threat to the health or safety of others will not be "qualified." A "direct threat" is a significant risk to the health or safety of others that cannot be eliminated or reduced to an acceptable level by the public entity's modification of its policies, practices, or procedures, or by the provision of auxiliary aids of services. Determination that a person poses a direct threat to the health or safety of others may not be based on generalization or stereotypes about the effects of a particular disability. The determination must be based on an individualized assessment that relies on current medical evidence, or on the best available objective evidence, to assess the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate or eliminate the risk.


EXAMPLE: An adult individual with active tuberculosis wishes to tutor elementary school children in a volunteer mentor program operated by the Department of Education. The board/department may refuse to allow the individual to participate on the grounds that the mentor's condition would be a direct threat to the health or safety of the children participating in the program, if the condition is contagious, and the threat cannot be mitigated or eliminated by reasonable modifications in its policies, practices, or procedures.

1.3 Customer service needs of people with disabilities


This section provides information about individuals categorized into five general groupings: individuals with mobility impairments; individuals who are blind or have low vision; individuals who are deaf or hard of hearing; individuals with chronic health conditions; and individuals with learning challenges. Although the groupings are not exhaustive, nor specifically categorized as such in the ADA, the groupings will guide you when anticipating how to provide customer service to individuals with disabilities. Remember that every individual is unique and specific needs will always be personalized. Use the information in this section to provide a framework for your planning, but always remember to talk specifically to any individual with a disability who has self-identified in order to provide the best service to his or her unique needs.

Providing quality service in a nondiscriminatory manner to individuals with disabilities involves an understanding of the needs described above and being prepared, should the need arise, to respond in a timely manner as an agent of the State of Hawaii.

Quality service also involves using language which reflects a sensitivity to current preferred terminology.

 *Refer to **ATTACHMENT A** for information on language and terminology relating to persons with disabilities.*

Service to customers and other program participants can be greatly enhanced by training your staff on the most appropriate way to interact or communicate with people with disabilities, learning to respect their individual needs and preferences without being patronizing, stigmatizing, or presuming stereotypes.

 *Refer to **ATTACHMENT B** for good customer service practices when you encounter members of the public who have disabilities.*

1.3.1 Individuals with mobility impairments

Individuals with mobility impairments include those who use wheelchairs, as well as those who are ambulatory but who have restrictions in their mobility.

A person using a wheelchair may use either a standard manual wheelchair or a motorized, battery-operated chair. The person may have anywhere from full to no use of his or her arms or legs. Some people use a wheelchair due to paralysis or loss of one or more of their lower extremities; others may use a wheelchair because walking on their own creates fatigue.

The primary needs of individuals who have mobility impairments who use wheelchairs are:

- an accessible facility which allows for full, independent mobility;
- safe emergency egress;
- access for a service dog or assistance animal;
- personal assistance handling food, materials, and other items, especially if the individual has quadriplegia and is paralyzed in the upper extremities.

Individuals who have mobility impairments but are ambulatory include those who use crutches, canes, braces, walkers, or other support devices. They usually require the use of their hands to maintain stability on their support devices. They may also have respiratory or cardiac conditions which preclude their ability to walk long distances.

The primary needs of individuals who have mobility impairments but are ambulatory are:

- an accessible facility in which major activities are located in close proximity to each other, minimizing walking distance;
- safe emergency egress;
- personal assistance handling food, materials, and other items, particularly if the individual uses a support device.

If your facility is particularly large, such as a convention center, orientation of the facility by way of a map is important, indicating the location of accessible features, especially if all elements are not accessible. For example, if only one set of rest rooms in the facility is accessible, knowing the location is important to minimize unnecessary walking. It is also important to inform a person who has a mobility impairment of the appropriate emergency egress procedures at the site.

1.3.2 Individuals who are blind or have low vision

Individuals who are blind or who have low vision may have a variety of residual visual skills and mobility capabilities. They may utilize a guide dog, white cane, or no assistive mobility device at all; some individuals will prefer a sighted guide to provide mobility and orientation.

Persons who are blind or have low vision will have differing levels of residual vision and will have different preferences for reading printed materials. The most common alternate formats are braille, large print, audiocassette tape, or computer disk. Many individuals who are blind or have low vision cannot read braille, especially those who have lost their sight later in life; others may not even be able to use large print. Therefore, it is important that all the options be offered to an individual, with the preferences of the person taken into consideration.

The primary needs of individuals who are blind or who have low vision are:

- an accessible facility, particularly free from safety hazards and protruding objects, with tactile signage;
- safe emergency egress;
- written information presented in an alternate format such as braille, large print, audiocassette, or computer disk;
- access for a guide dog;
- a well-lit facility to maximize seeing;
- personal assistance in picking up and handling items such as food and materials.

Regardless of an individual's level of independent mobility, a person who is blind or who has low vision may need some orientation to your site if he or she must navigate the site. The orientation should include the location of the rest rooms, telephones, drinking fountains, registration desk, elevators and/or stairs, eating facilities, and guest accommodations, if appropriate. An orientation can be provided by a sighted person navigating the person who is blind or who has low vision through the facility, by an audiocassette tape and tape player explaining the site layout, or by a tactile map of the site. When orienting a person to the site, it is important to note where a person might take their guide dog to be relieved or walked. It is also important to inform a person who is blind or who has low vision of the appropriate emergency egress procedures at the site.

1.3.3 Individuals who are deaf, hard of hearing or deaf-blind

Individuals who are deaf or hard of hearing may have a range of hearing capabilities. The residual hearing of people who are deaf or hard of hearing will vary considerably. Some may not be able to hear any sound, while others may have difficulty with certain decibel levels or being able to distinguish between various types of sound (voice, music, background noise, etc.).

The primary needs of persons who are deaf or hard of hearing are:

- enhancement of information which is presented orally or aurally by an assistive listening system, sign language interpreter, or captioning;
- an accessible facility, particularly with a text telephone and amplification devices;
- access for a signal dog;
- safe emergency egress.

Although some people who are deaf or hard of hearing may have lip-reading skills, it is not appropriate to rely upon lip-reading for communication. Under the best circumstances of one-to-one communication, a person who is a good lip reader will still only comprehend 30-40 percent of what is spoken. Therefore, it is necessary to plan an alternative to lip-reading. The most common solution is to utilize a sign language interpreter. Real-time captioning and computer-assisted note taking are also options. The availability of speeches and other presentations in written text to be read will also help a person who is deaf or hard of hearing to understand the context more comprehensively.

Persons who are hard of hearing may rely upon an assistive listening device to augment their hearing. They may have a hearing aid or use a portable listening amplification system such as an audio loop, FM system, or infrared system.

1.3.4 Individuals with chronic health conditions

Persons with chronic health conditions have various needs, each unique to his or her medical condition. Many people with chronic health conditions will not be visibly disabled. As someone planning your program, service, or activity, you will most likely only know that a person needs special arrangements through special request. Some of the more common conditions and their requirements include:

- a person with diabetes may need access to refrigeration in order to store insulin;
- a person who has hemophilia may need access to refrigeration to store blood clotting Factor K;
- a person who is hypoglycemic may need immediate and around-the-clock access to food such as juices or fruit;
- a person who uses a portable respirator or dialysis may need space for treatment;
- a person with a metabolic condition may need special meals;
- a person with chemical insensitivity or allergy may need an environment which is smoke-free or otherwise minimizing in allergic chemicals or pollutants.

1.3.5 Individuals with learning challenges

Individuals with learning challenges include those who have mental retardation or learning disabilities. The nature of an individual's learning challenge will vary according to the specific impairment or neurological deficit. Individuals may have difficulty writing or reading (particularly at a fast pace), processing auditory information (particularly complex information), maintaining attention, comprehending directions, or processing input from multiple sources. Similar to individuals with chronic health conditions, people with learning challenges will probably not be visibly disabled and you will likely only know that a person needs special arrangements through a special request.

Many of the accommodations or aids which are suitable for individuals with other disabilities will also be appropriate to meet the needs of individuals with learning challenges. Some of the possible accommodations for an individual with a learning challenge include:

- written materials in an alternate format such as audiocassette tape, in simplified outline format, or in summary format;
- color coding of materials for easy reference;
- personal assistance in note taking, providing orientation, etc.;
- permission to use personal audiocassette tape recorders to record information for later re-listening.

It is important to recognize that the ADA does not expect that the content of your program be changed in order to be understood by a

person with a learning challenge. In fact, there are presentations which are not understood by many people in an audience, not because of a learning challenge but because of the sophistication of the content. However, efforts should be made to maximize the ability of a person to understand the content of whatever is being presented if his or her difficulty is the result of an impairment which can be at least partially compensated for by an accommodation or auxiliary aid.

The summary chart following is a compilation of the needs of individuals with disabilities as described in this section.

**SUMMARY CHART
THE NEEDS OF INDIVIDUALS WITH DISABILITIES**

Person with a Disability	(Possible) Needs
Individuals with a mobility impairment	Accessible facility Safe emergency egress Access for a service dog or assistance animal Personal assistance
Individuals who are blind or have low vision	Accessible facility Safe emergency egress Written information in alternate format Access for a guide dog Well-lit facility Personal or mobility assistance
Individuals who are deaf or hard of hearing	Oral or aural information in an alternate format Accessible facility Access for a signal dog Safe emergency egress
Individuals with chronic health conditions	Access to refrigeration Access to special foods Smoke-free or non-allergic environment
Individuals with learning challenges	Written information in an alternate format Color coding of important information Personal assistance